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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



**U.S. Citizenship
and Immigration
Services**

B5

Date: **JUL 25 2012** Office: NEBRASKA SERVICE CENTER

IN RE: Petitioner:
Beneficiary:

PETITION: Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(2)

ON BEHALF OF PETITIONER:

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen in accordance with the instructions on Form I-290B, Notice of Appeal or Motion, with a fee of \$630. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

for John Vaughan
Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, Nebraska Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is a software development company. It seeks to employ the beneficiary permanently in the United States as a software engineer (quality assurance) pursuant to section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2). As required by statute, a labor certification accompanied the petition. The director determined that the beneficiary did not satisfy the minimum level of education stated on the labor certification. The director denied the petition accordingly.

The AAO issued a Request for Evidence (RFE) and Notice of Derogatory Information (NDI) on May 18, 2012 concerning the actual minimum educational requirements of the offered position.¹ The AAO explained that it consulted a database that did not equate the beneficiary's credentials to a U.S. master's degree. The AAO solicited additional evidence of the beneficiary's credentials. The AAO noted that it appeared the business may no longer be in operation, and requested evidence of current activity and continued existence of the job offer. The AAO also requested evidence to establish that the petitioner has the ability to pay the beneficiary the proffered wage beginning on the priority date of the visa petition and continuing up to the present. Specifically, the petitioner was instructed to submit tax returns or audited financial statements for the petitioner for 2008, 2009, 2010, and 2011 and Forms W-2 or 1099 (if any) for the beneficiary for 2008, 2009, 2010, and 2011.

This office allowed the petitioner 45 days in which to respond to the RFE/NDI. In the RFE/NDI, the AAO specifically alerted the petitioner that failure to respond to the notice could result in dismissal of the appeal. The failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. *See* 8 C.F.R. § 103.2(b)(14). More than 45 days have passed and the petitioner has failed to respond with proof that the beneficiary possessed the required education for the offered position and that it has the ability to pay the beneficiary the proffered wage.

Thus, the appeal will be dismissed as abandoned. *See also* 8 C.F.R. § 103.2(b)(13).

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not met that burden.

ORDER: The appeal is dismissed.

¹ The AAO conducts appellate review on a *de novo* basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004).